strategy and fraud, and was forcible. *Gallant* v. *Miles,* (Mich. 1918), 166 N. W. 1009.

At common law a landlord could enter, a tenancy having expired, and take possession by force. Statutes soon did away with this privilege. See *Hyatt* v. *Wood,* 4 Johns (N. Y.) 150. There are two fundamental theories as to the purpose underlying these statutes, which lead to diverse definitions of the meaning of forcible and peaceable under them. The first of these theories is that the object of the statute is to prevent riotous and forcible measures in breach of the peace. *Fults* v. *Munro,* 202 N. Y. 34. Under such a view, the statute is interpreted to allow the landlord a broad scope for operations in retaking possession. An entry in the absence of the tenant was thus held peaceable, in *Brooks* v. *Brooks,* 84 N. J. L. 210. And a landlord was allowed to break in through a trap door, forcing boards in it, on the grounds that he had committed a mere trespass, without threats of personal violence, in *Hammond Savings & Trust Co.* v. *Boney,* 61 Ind. App. 295. Where this notion of the reason for the law obtains, the line is generally drawn that, in addition to a mere trespass, such words, circumstances, or actions as have a natural tendency to excite fear or apprehension of danger, are necessary to make an entry forcible. *Butts* v. *Voorhees,* 13 N. J. L. 13. The other underlying theory as to the reason for the statutes against forcible entries is that they are designed to prevent people from taking the law into their own hands. *Mitchell* v. *Davis,* 23 Cal. 381. Under this view, any entry without due legal formality, however quiet, is forcible. *Seals* v. *Williams,* 80 Miss. 234. An entry during the tenant's absence was held forcible. *Wilson* v. *Campbell,* 75 Kan. 159. Michigan seems to have held this second view consistently. In *Seitz* v. *Miles,* 16 Mich. 456, where the situation was very like that of the principal case, an entry under an invalid writ was held forcible. In *McIntyre* v. *Murphy,* 153 Mich. 342, an entry by stealth was held forcible. This case is cited and relied on by the principal case. While the early legislatures probably sought, by forcible entry statutes, to preserve the peace, the tendency today seems to aim in the other direction as well; that an individual has not the right to make himself judge, jury, and hangman in his own cause.

MALICIOUS PROSECUTION—CIVIL ACTION—ABSENCE OF ARREST OR SEIZURE. —Defendant in the present suit had, without probable cause, maliciously, and unsuccessfully, caused a civil action to be maintained by third parties against the present plaintiff. There had been, however, no arrest of the person or seizure of the property of the present plaintiff. In the present action it was *held* that the absence thereof was no defence to this suit for malicious prosecution, *Peerson* v. *Ashcraft Cotton Mills* (Ala. 1918), 78 So. 204.

In England the Statute of Marlbridge, 52 Henry III, c. 6, anno 1267, gave the successful defendant his costs, and, if the suit was found to have been instituted maliciously, he was also awarded damages. After this it was necessary, in a suit for malicious prosecution, to allege some special grievance, as arrest of the person or seizure of property, *Savil* v. *Roberts,* 1 Salk.

14; *Smith* v. *Cattel,* 2 Wils. K. B. 376. This doctrine is followed to some extent in the United States, *Potts* v. *Imlay,* 4 N. J. Law *330; *Mayer* v. *Walter,* 64 Pa. St. 283, 289; *Ely* v. *Davis,* 111 N. C. 24. The theory of these cases is that the costs afford full indemnity to the successful defendant, that otherwise litigation might be interminable, and that the plaintiff is given no remedy when the defendant interposes a groundless defence. The contrary doctrine is to the effect that special damages, such as arrest of the person or seizure of the property of the former defendant, need not be shown, *Kolka* v. *Jones,* 6. N. D. 461; *Whipple* v. *Fuller,* 11 Conn. 582; *Eastin* v. *Bank of Stockton,* 66 Calif. 123; *McCardle* v. *McGinley,* 86 Ind. 538; *McCormick Harvesting Machine Co.* v. *Willan,* 63 Neb. 391. This is thought to be the modern tendency, see 16 MICH. LAW REV. 457, and note to *McCormick Harvesting Machine Co.* v. *Willan* (*supra*), 93 Am. St. Rep. 449, 466. The question was before the Alabama court for the first time. In following what they also deemed the modern tendency, the court said that the costs under modern statutes, which differ from the Statute of Marlbridge in that they make no extra allowance for damages in cases maliciously prosecuted, were inadequate and could not compensate for the necessary and reasonable expenses to which the defendant is usually put, nor make good an injury to reputation suffered by reason of the plaintiff's malicious allegations. Further, that experience has shown that litigation has not been interminable as a result of this doctrine. It is always a question of whether the party instituting the previous malicious suit was sufficiently punished by having costs assessed against him when he lost it.

NEGLIGENCE—DUTY TO USE CARE—VOLUNTARY UNDERTAKING.—D invited P to ride gratuitously with him in his automobile and due to D's negligence in crossing a railroad track, though warned by P of an approaching train, the car was struck, P sustaining serious injuries. *Held,* that P could recover therefor. *Avery* v. *Thompson* (Me., 1918), 103 Atl. 4.

The sole question involved in the instant case is the measure of care which an invitor for social purposes owes to his invitee. The conflicting answers which the courts have given to this query are represented by two recently decided cases. This divergence of the authorities finds expression in the diverse solution of the more fundamental problem as to whether or not there are degrees of negligence. The Massachusetts courts, which have uniformly enunciated the doctrine that such do exist, hold the invitor liable only for gross negligence. Thus in *Massaletti* v. *Fitzroy,* 118 N. E. 168, it was held that D was not liable for injuries which P, his invitee, sustained in an accident that was due solely to D's negligence, which was not gross. In accord with this view are *West* v. *Poor,* 196 Mass. 183; *Moffatt* v. *Bateman,* L. R. 3 P. C. 115, semble. But the other view, that of the instant case, seems to be supported by the large majority of the cases. *Pigeon* v. *Lane,* 80 Conn. 37; *Patnode* v. *Foote,* 138 N. Y. Supp. 221; *Beard* v. *Klusmeier,* 158 Ky. 153; *Fitzjarrell* v. *Boyd,* 123 Md. 497; *Siegrist* v. *Arnot,* 10 Mo. App. 197. In the last case Judge Thompson says that "the governing principle here is, that whenever a person undertakes an employment which